REMARKS:

Claims 1-21 are pending in this application.

Claims 1-21 stand rejected.

Claims 1 and 9 have been amended to state "less than 20 mole percent" rather than "about 20 mole percent". This amendment is supported by original disclosure in lines 5 and 7 of paragraph [0018].

Claims 1 and 9 have also been amended to incorporate the limitations of claims 8 and 14. Claims 8 and 14 have been cancelled. Claim 5 was amended for proper antecedent basis to match the amendment of claim 1.

While examination by others has no effect on the present examination, Applicant notes that the present application was allowed in Europe as EP 1,479,737.

Comments on the Response to Applicant's Arguments in the Final Office Action

The key to the present invention is that the "triarylsilyl(meth)acrylate component is present at surprisingly low levels, are useful to produce marine antifouling paints that have self polishing properties" (paragraph [0016] of the original Specification). Indeed, Applicant has found that erosion rates of 2 to 15 microns/month can be obtained with just 9 to less than 20 (as amended) mole percent.

The Examiner's comments in the Final Rejection are:

1) "terpolymer": The Gitlitz patent states that B can be "one or more copolymerizable ethylenially unsaturated monomers" (col 4, lines 8 and 9) – yet claims only a copolymer where "B Is the residue of an ethylenically unsaturated monomer", and exemplifies only copolymers. Applicant has found that a terpolymer is needed to produce the required erosion rate at a low level of triarylsilyl(meth)acrylate.
2) "9 to less than 20 mole percent": Claim 8 (and col. 5, lines 32-37) of Gitlitz states a 10-80 mole percent of organosilyl comonomer.
    a) First this rate is for a comonomer and not a termonomer.
    b) Second, the rate in Gitlitz applies to All organosilyl monomers, and not to the specific triarylsilyl(meth)acrylate of Applicant's claims. Indeed, no triarylsily-monomers are exemplified in Gitlitz. The only trend that can be seen in the

Gitlitz data, is that a lower mole percent of some copolymer (never a terpolymer and never a triarylsilyl) gives a lower hydrolysis rate.

c) Third, while a general mole percent level is very wide to cover all types (straight alkyl, branched alkyl or phenol, and mono-, di-, or tri) sily groups, there is no teaching or suggestion in the Gitlitz reference as to the mole percentage range that would apply to a tri-arylsilyl- monomer.

d) All Examples in Gitlitz involve 20 mol percent or more – clearly outside of Applicant's claims – therefore all Examples in Gitlitz teach away from Applicant's claims.

Therefore there is no teaching or suggestion for one of skill in the art in the Gitlitz reference to combine a tri-arylsilyl- monomer, as a terpolymer, at a level of less than 20 mole percent. The Gitlitz reference makes mention of each of these 3 components of Applicant's claims – but always in reference to a large group, and never to specifically combine any 2 claim limitations, much less all three.

Applicant's claims, as amended, require, in addition to the triarylsilyl(meth)acrylol functional polymer binder, a toxicant, and one or more specific stabilizing agents. The Gitlitz reference does not teach or suggest Applicant's claimed terpolymer binder as stated above. Further, the Gitlitz reference, fails to teach or suggest the terpolymer binder combined with Applicant's specifically claimed stabilizing agents.

The Gitlitz reference describes a additives to a polymeric binder only a solvent, toxicant, pigment, fillers, and retarders. The retarders referenced are those found in US 4,260,535, US 4,191,579 and US 2,087,415, and GB 2087415. These retarders are hydrophilic, non-volatile organic retarders whose function is to control the rate of dissolution of the paint film ('579 col 6, lines 59 – 68). None of the retarders referenced by the '055 reference is the same or similar to the stabilizers required in Applicant's amended claims. The stabilizers listed in Applicant's claims serve the function to prevent an unsatisfactory viscosity increase during storage.

One in the art would not be motivated by the marine antifouling coatings of the '055 reference to practice Applicant's amended claims.

In view of the above, the Applicant believes that the reasons for rejection have been overcome, and the claims, as amended herein, should be allowable to the Applicant. Accordingly, reconsideration and allowance are requested.

Respectfully submitted,

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